IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1122 of 1996

HONOURABLE MR.JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Appellant(s)
Versus
M/S. ASHOKKUMAR & CO & 6 - Opponent(s)

==========

Appearance :
MR SP HASURKAR, APP, for Appellant(s) : 1,
(MR KG YAGNIK) for Opponent(s) : 1 - 2,4 - 5.
UNSERVED-EXPIRED (N) for Opponent(s) : 3,
NOTICE SERVED for Opponent(s) : 6 - 7.

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. This appeal is directed against the judgement and order dated 24th September 1996 passed by the learned Chief Judicial Magistrate, Nadiad, in Criminal Case No.34 of 1987 whereby the learned Judge has acquitted the respondents of the offences under sections 2(I-A)(A)(H) and I(A) and 16(1)(A) of Prevention of Food Adulteration Act as alleged against them.

2. The prosecution case, in short, is to the effect that on 5.8.1986 the Food Inspector visited the premises of the respondents, collected sample of groundnut oil and after completing formalities sent the same for laboratory testing. Upon testing it was alleged that the same was adulterated and therefore a complaint came to be filed against the respondents for the alleged commission of offences punishable under sections 2(ia)(a)(m), 7(1)(5) and 16(1)(a)(1) of the Food Adulteration Act.

3. After recording necessary evidence the learned Magistrate acquitted the respondents of the offences with which they were charged by the aforesaid judgement and order. It is against the said judgement and order the present appeal has been filed at the instance of the State.

4. Mr. S.P. Hasurkar, learned APP appearing for the State submitted that the learned Magistrate has erred in acquitting the respondent-accused though there are ample direct and indirect evidence to connect the respondents with the alleged crime. He further submitted that the learned Magistrate has committed an error in acquitting the respondents on the ground that the complaint is lodged late and there is delay. He submitted that only on the ground of delay the respondents ought not to have been acquitted.

5. At the outset it is required to be noted that the scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> “16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not

> ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgement delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

6. I have heard learned Advocate for the appellant and perused the relevant documents on record. As a result of hearing and perusal of the record it is found from the record that there are material contradictions in the evidence of prosecution. The trial court has clearly found that there is a gross delay in calling for the sample for re-examination and the case was filed after a period of one and half years of the sanction. It is also found from the record that collection of sample is also contrary to the statutory rules. The trial court has also discussed various decisions of this Court to base its conclusion. Thus, the trial court has come to the conclusion that the prosecution has not established the case against the

respondent beyond reasonable doubt.

6.1 In the present appeal learned Advocate for the appellant is not in a position to show anything on record to take a contrary view of the matter. There is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

7. In the premises aforesaid, the appeal is required to be dismissed and is accordingly dismissed. R & P, if lying in this Court, shall be sent back forthwith.

[K.S. JHAVERI, J.]

ar